we stated in that case and which we find it unnecessary to repeat we are of the opinion that in the present case the ground of appeal based on sections 76, 79 and 80 is without substance.

I now come to the only ground of appeal which has given us some concern.

It was argued that on the evidence the appellant was a member of the Indonesian military forces. He had associated himself with them. He had been trained by them. He formed part of an organised company with them. He was wearing Indonesian uniform. He was carrying Indonesian weapons. Then it was said that the relationship between this country and the Republic of Indonesia if it did not amount to actual war in the conventional Grotian sense amounted to a state of hostilities as envisaged by the Geneva Conventions of 1949 relating to prisoners of war. In the circumstances the appellant was entitled to the benefit of these Conventions to which this country is a party and which have become part of our municipal law by reason of the Geneva Conventions Act, 1962. At the trial he did not claim the protection of the Conventions but we have listened to a long and careful argument to the effect that nonetheless he was entitled to that protection.

The grounds on which it has been argued that the appellant was a member of the Indonesian military forces have been stated. There is, however, one other relevant fact and that is that on the appellant's own admission he was born in the State of Johore. There is no other evidence having any bearing on his national status and from the admitted fact that he was born in the State of Johore then in the absence of anything to the contrary it must be presumed that whatever the position as regards citizenship he is at all material times a Johore national.

That being so, in our view he is not entitled to the benefit of the Geneva Conventions.

With regard to the Conventions I would observe that they are a treaty or, at any rate, an international agreement analogous to a treaty and treaties are not to be interpreted in the same way as ordinary contracts. What I have in mind is better said than I can say it by Professor Keith in *Wheaton's* Elements of International Law (6th Ed.) at page 522:—

> "The general principle is that treaties, being compacts between nations, are not to be subjected to the minute interpretation which in private law may result in defeating through technical construction the real purpose of the negotiators."

Bearing that in mind we are entitled to conclude that the parties to the Geneva Conventions had in mind the general principles of international law and of the law of nations and on the particular point with which we are concerned here I would read a passage by Dr. Lauterpacht from *Oppenheim's* International Law (7th Ed.). He discusses in Chapter VI the armed forces of the belligerents in general and their privileges in particular and he concludes with the following passage (p. 268):—

> "The privileges of members of armed forces cannot be claimed by members of the armed forces of a belligerent who go over to the forces of the enemy and are afterwards captured by the former. They may be, and always are, treated as criminals. The same applies to traitorous subjects of a belligerent who, without having been members of his armed forces, (that is their own armed forces) fight in the armed forces of the enemy. Even if they appear under the protection of a flag of truce, deserters and traitors may be seized and punished."

In our view the Geneva Conventions are to be read in the light of that statement which after all is a statement of a principle of international law by a recognised authority and read in that light the present appellant is not entitled to the protection of the Conventions even if he did become a member of the Indonesian Armed Forces because he was a traitorous subject of the Ruler of the State of Johore and was engaged in assisting the Republic of Indonesia in armed conflict with this country of which Johore is part.

Although I do not think the expression has actually been used there is no getting away from the fact that the Internal Security Act, and in particular section 57, does create what might be called a form of constructive treason. It was introduced as far as I am aware by the British in the Irish troubles of 1920 by proclamation under martial law the provisions of which were enforced not by the civil courts but by military courts (see *Clifford* v. *O'Sullivan*).[2] It was used again by the British Government in Palestine during the troubles there. It was introduced in this country in 1948 to deal with the communist troubles under the Emergency Regulations Ordinance 1948 which was the authority for the Emergency Regulations with which became so unfortunately familiar during the ensuing years. And now it has become part of the permanent local apparatus of the country.

For these reasons then we would dismiss the appeals against the first and second convictions.

Appeals dismissed.

Solicitors: *Xavier & Thambiah.*

TOWN HOUSE HOTEL LTD. v. SHANGHAI HALL LTD.

[O.C.J. (Abdul Aziz J.) April 28, 1966]

[K.L. — Civil Suit No. 92 of 1966]

Landlord and Tenant — Notice to quit — Sufficiency of — Triable issue.

Practice and Procedure — Order 14 — Application for leave to sign final judgment — Triable issue — Leave to defend on giving security — R.S.C., 1957, O. 14 r. 1.

The plaintiffs claimed possession of premises, which were not controlled premises, on the ground that the defendants had failed to pay the rent of $3,000 a month for four months. The defendants by their defence did not deny that rent was in arrears but alleged that the notice to quit was invalid, they pleaded that there was an oral agreement between the parties providing for a year's prior notice of termination of the tenancy and they counterclaimed for damages for breach of covenant.

Held: as there was no dispute that the rent was in arrears in this case but as the sufficiency or validity of the notice was a triable issue, leave to defend would be given on the defendants providing security to the satisfaction of the Registrar of an amount equivalent to the arrears of rent.

Cases referred to:—

(1) *Codd* v. *Delap* (1905), 92 L.T. 510, H.L.

(2) *Jacobs* v. *Booths Distillery Co.* (1901), 85 L.T. 262.

(3) *Roberts* v. *Plant* [1885] 1 Q.B. 597 C.A.

(4) *Anglo-Italian Bank* v. *Wells* (*and Davies*), 38 L.T. 197, C.A.

CIVIL SUIT.

S. K. Peddie for the plaintiffs.

R. R. Chelliah for the defendants.

Cur. Adv. Vult.

Abdul Aziz J.: This is an application for leave to sign final judgment under Order 14 rule 1 of the Rules of the Supreme Court on the ground that the defendants have no defence to the action.

The statement of claim shows that the plaintiffs are the chief tenants of a six-storey block of building situated at Jalan Tong Shin, Kuala Lumpur and they allege:—

(a) that the defendants have failed to pay the rent at $3.000 per month for four months;

(b) that the defendants have failed to give vacant possession of the first floor of the premises by the 30th November 1965 as required by a written notice dated 28th October 1965;

(c) that up to date the defendants have not paid any rent and have not given vacant possession of the premises.

The plaintiffs, therefore, claim:—

(a) vacant possession of the first floor of the said premises;

(b) arrears of rent for the months of September, October and November 1965 amounting to $9,000;

(c) double rent at $6,000 per month from 1st December till date of judgment;

(d) interest and costs.

The defendants did not deny that rent was in arrears, that vacant possession had not been given nor paid the rent to date. However, they averred as follows:—

(a) the notice was invalid and bad in law;

(b) there was an oral agreement made in or about August 1964 wherein the plaintiffs in consideration of the payment of a premium of $7.000 paid by the defendants sub-let to the defendants the first floor of the premises from the 21st August 1964 on an ascending scale of rent which was $3,000 per month from the 21st August 1965. Either party may terminate the tenancy by giving one year's prior notice in writing; and that there was a covenant in the tenancy agreement against the use of any part of the premises for the carrying on of the business of restaurant and/or nightclub;

(c) that there was a breach of this covenant in that the plaintiffs had allowed the mezzanine floor of the premises to be used for the carrying on of the business of the restaurant.

The defendants, therefore, counterclaimed for damages for breach of the covenant.

The reply and defence to the counterclaim was firstly a denial that the first floor was sub-let to the defendant firm although it was occupied by the firm for the purposes of a restaurant. They say that the original sub-tenant of the first floor was one Mr. Chong Mun Foo who became a director of the defendant company and who had since retired from the company and as they were still bound to Mr. Chong Mun Foo under a subsisting tenancy they were in no position to enter into any agreement with the defendant firm for a new sub-tenancy. They, therefore, contended that whatever arrangement there was between the plaintiffs and the defendants was, at its highest, a contingency agreement. Since there was no agreement they denied any right to restrain lawful use of the mezzanine floor or any other floor for a restaurant. It is common ground that the premises are not subject to the Control of Rent Ordinance. The defendants have not filed any affidavit in reply as they are not obliged to. So we are left to decide the application without the benefit of a reply.

Mr. Peddie for the plaintiffs forcibly argued that under any circumstances the defendants were obliged to pay monthly rental and since the defendants were in arrears of rent the plaintiffs were entitled to possession without notice although in this case notice had been served on the defendants. He urged that the counterclaim be disposed of by an independent action under Order 21 rule 15. He, therefore, submitted that since there were no triable issues in the plaintiffs' claim the plaintiffs should be entitled to leave to sign final judgment as prayed. Also since this was a continuing breach any further delay in the disposal of the action would result in great financial loss to the plaintiffs.

The rule under Order 14 rule 1 is fairly well established. Two leading House of Lords cases set the tone for Order 14 judgments. In *Codd* v. *Delap* [1] it was said that "Order 14 is a very useful process indeed but it has to be used with very great care and must not be used unless it is a clear that there is no substantial question to be tried". Again in *Jacobs* v. *Booths Distillery Co.* [2] the House of Lords coined the phrase "a triable issue" as entitling a defendant to unconditional leave to defend. In *Roberts* v. *Plant* [3]

it is stated that the purpose of Order 14 is to enable a plaintiff to obtain summary judgment without trial, if he can prove his claim clearly; and if the defendant is unable to set up a *bona fide* defence or raise an issue against the claim which ought to be tried. Also in *Anglo-Italian Bank* v. *Wells* (*and Davies*) (4) it is stated that Order 14 is intended to prevent a man clearly entitled to money from being delayed, where there is no fairly arguable defence to be brought forward.

The question as to whether or not the notice was invalid and bad in law depends so much on the nature of the relationship of the parties. There is nothing in the statement of claim to indicate what that relationship was although the inference was that it was one of monthly tenancy or licensee. The defendants, on the other hand, in their defence have pleaded that by virtue of an oral agreement and in consideration of a premium of $7,000 there exists a relationship of landlord and tenant and the term of the contractual tenancy was that the tenancy could only be terminated by giving one year's notice in writing. At this stage of the proceedings the question of the relationship of the parties is very much in dispute and consequently, it follows that the question as to whether the relationship has been properly determined is a triable issue. If it were a periodic tenancy, in the absence of any other stipulation, the tenancy is determinable by notice to quit and the sufficiency or validity of the notice to quit becomes a question to be tried.

On the question of leave to defend I have taken note of the fact that there is no dispute that the rent has been in arrears since September 1965 up to date and that further sums will accrue until this action is finally disposed of and that there is a long and heavy list of cases pending for hearing in these courts. In the circumstances the defendants are not entitled to unconditional leave to defend. The ends of justice will be met by making an order that the defendants do provide security to the satisfaction of the Registrar of an amount equal to the arrears in rent as a condition for leave to defend i.e. $24,000. There will also be a direction that the counterclaim of the defendants be disposed of by an independent action.

Order accordingly.

Solicitors: *Kam Woon Wah & Co.; M. N. Cumarasami & Co.*

SADASIVAN v. TAN KOK CHENG

[O.C.J. (Gill J.) April 30, 1966]

[K.L. — Civil Suit No. 352 of 1965]

Landlord and Tenant — Death of tenant leaving no member of family in occupation of premises — Notice to quit served on Chief Justice — Grant of letters of administration to attorney of widow — Whether administrator becomes statutory tenant — Probate and Administration Ordinance, 1959, s. 39.

Executors and Administrators — Attorney of widow obtaining letters of administration — Whether administrator acquires tenancy rights.

In this case the deceased was before his death the tenant of a room at premises in Kuala Lumpur governed by the Control of Rent Ordinance, 1956. The deceased lived alone in the room. He died on May 28, 1964, and on November 20, 1964, the landlord served a notice to quit expiring on December 31, 1964, on the Chief Justice of Malaya in order to terminate the deceased's contractual tenancy. Subsequently the plaintiff obtained a power of attorney from the deceased's widow in India and on December 22, 1964, obtained letters of administration to the estate of the deceased. The plaintiff thereupon claimed possession of the premises.

Held: (1) the contractual tenancy in this case came to an end on December 31, 1964 on the expiry of the notice to quit served on the Chief Justice of Malaya;

(2) as neither the plaintiff nor any member of the deceased's family was in occupation of the premises, no statutory tenancy of the premises could arise and therefore the plaintiff had no claim to the possession of the premises.

Cases referred to:—

(1) *Smith* v. *Mather* [1948] 2 K.B. 212.

(2) *Allagappa Chettiar* v. *Inder Singh* [1962] M.L.J. 246.

(3) *Fred Long & Sons Ltd.* v. *Burgess* [1949] 2 All E.R. 484, 487.

CIVIL SUIT.

K. L. Devaser for the plaintiff.

Thomas M. L. Lee for the defendant.

Cur. Adv. Vult.

Gill J.: The plaintiff in this case is the administrator of the estate of N. G. Panikker deceased who died in Kuala Lumpur on 28th May, 1964, a limited grant of letters of administration having been issued to him as the lawful attorney of N. Saraswathi Geacher, the deceased's lawful widow who lives in India. Up to the time of his death the deceased was a monthly tenant of a portion of the ground floor of the premises at No. 22 Scott Road, Kuala Lumpur. The defendant is the chief tenant of the premises.

The action by the plaintiff is for the delivery to him by the defendant of vacant possession of the portion of the premises occupied by the deceased during his lifetime, the delivery to him of certain properties belonging to the deceased, special damages in the sum of $423 being the expenses incurred by the plaintiff to obtain the discharge of a warrant of distress which the defendant had obtained from the Sessions Court, Kuala Lumpur and general damages.

The facts of the case are not in dispute, apart from the circumstances under which the defendant is alleged to have gone into occupation